

Pro Se 3 (Rev. 12/16) The Defendant's Answer to the Complaint

UNITED STATES DISTRICT COURT

for the

US District Court for the District of Arizona

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AND IS SUBJECT TO REJECTION BY THE COURT.REFERENCE CIVIL 5.4
(Rule Number/Section)

Division

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OCT 10 2023	
CLERK U.S. DISTRICT COURT DISTRICT OF ARIZONA	
BY	DEPUTY

Houston Specialty Insurance Company ("HSIC")

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint.
If the names of all the plaintiffs cannot fit in the space above,
please write "see attached" in the space and attach an additional
page with the full list of names.)

-v-

Robert Fogel; Mikal Fogel

Defendant(s)

(Write the full name of each defendant who is being sued. If the
names of all the defendants cannot fit in the space above, please
write "see attached" in the space and attach an additional page
with the full list of names.)

Case No. CV-23-1187-PHX-DLR

(to be filled in by the Clerk's Office)

Jury Trial: (check one) ☐ Yes ☒ No

THE DEFENDANT'S ANSWER TO THE COMPLAINT

I. The Parties Filing This Answer to the Complaint

Provide the information below for each defendant filing this answer or other response to the allegations in the plaintiff's complaint. Attach additional pages if needed.

Name	<u>Robert Fogel AND Mikal Fogel</u>
Street Address	<u>5532 Rabbit Ridge Lane</u>
City and County	<u>Edmond, Logan County</u>
State and Zip Code	<u>Oklahoma 73025</u>
Telephone Number	<u>(318)550-1226</u>
E-mail Address	<u>rfogel@umich.edu</u>

II. The Answer and Defenses to the Complaint

A. Answering the Claims for Relief

On a separate page or pages, write a short and plain statement of the answer to the allegations in the complaint. Number the paragraphs. The answer should correspond to each paragraph in the complaint, with paragraph 1 of the answer corresponding to paragraph 1 of the complaint, etc. For each paragraph in the complaint, state whether: the defendant admits the allegations in that paragraph; denies the allegations; lacks sufficient knowledge to admit or deny the allegations; or admits certain allegations but denies, or lacks sufficient knowledge to admit or deny, the rest.

B. Presenting Defenses to the Claims for Relief

Write a short and plain statement identifying the defenses to the claims, using one or more of the following alternatives that apply.

1. The court does not have subject-matter jurisdiction over the claims because *(briefly explain why there is no federal-question jurisdiction or diversity-of-citizenship jurisdiction; see the complaint form for more information)*

2. The court does not have personal jurisdiction over the defendant because *(briefly explain)*

3. The venue where the court is located is improper for this case because *(briefly explain)*

4. The defendant was served but the process-the form of the summons-was insufficient because *(briefly explain)*

The delay in this matter stems from several changes in the lawyers and law firms involved causing delays and confusion.

The process changed from mediation to interpleader.

The amount requested by the Plaintiff was not stated.

5. The manner of serving the defendant with the summons and complaint was insufficient because *(briefly explain)*

admits, but we believed that the mediator wshen he wrote had shared the information

6. The complaint fails to state a claim upon which relief can be granted because *(briefly explain why the facts alleged, even if true, are not enough to show the plaintiff's right to recover)*

The amount requested by the Plaintiff is not stated.

7. Another party *(name)* _____ needs to be joined (added) in the case. The reason is *(briefly explain why joining another party is required)*

Other than the defendants already listed, I know of no other parties to add
admit.

- a. If the basis for subject-matter jurisdiction is diversity of citizenship, state the effect of adding the other party:

The other party is a citizen of the State of *(name)* _____.

Or is a citizen of *(foreign nation)* _____. The amount of damages sought from this other party is *(specify the amount)* _____.

- b. If the claim by this other party is based on an alleged violation of a federal constitutional or statutory right, state the basis:
-

C. Asserting Affirmative Defenses to the Claims for Relief

Identify an affirmative defense or avoidance that provides a basis for the defendant to avoid liability for one or more of the plaintiff's claims even if the basis for the claim is met. Any affirmative defense or avoidance must be identified in the answer. Include any of the following that apply, as well as any others that may apply.

The plaintiff's claim for *(specify the claim)*

"claims to the disputed funds". I lack sufficient knowledge of the other defendant's claims. We have not received Subrogation information from the other defendant's
, or two of our three insurers.

is barred by *(identify one or more of the following that apply)*:

1. Accord and satisfaction *(briefly explain)*
lack sufficient knowledge
-

2. Arbitration and award *(briefly explain)*
lack sufficient knowledge
-

3. Assumption of risk *(briefly explain)*
lack sufficient knowledge
-

4. Contributory or comparative negligence of the plaintiff *(briefly explain)*
-

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lack sufficient knowledge

5. Duress (*briefly explain*)
lack sufficient knowledge
-

6. Estoppel (*briefly explain*)
lack sufficient knowledge
-

7. Failure of consideration (*briefly explain*)
lack sufficient knowledge
-

8. Fraud (*briefly explain*)
lack sufficient knowledge
-

9. Illegality (*briefly explain*)
lack sufficient knowledge
-

10. Injury by fellow employee (*briefly explain*)
lack sufficient knowledge
-

11. Laches (Delay) (*briefly explain*)
lack sufficient knowledge
-

12. License (*briefly explain*)
lack sufficient knowledge
-

13. Payment (*briefly explain*)
lack sufficient knowledge
-

14. Release (*briefly explain*)
lack sufficient knowledge
-

15. Res judicata *(briefly explain)*
lack sufficient knowledge
-

16. Statute of frauds *(briefly explain)*
lack sufficient knowledge
-

17. Statute of limitations *(briefly explain)*
lack sufficient knowledge
-

18. Waiver *(briefly explain)*
lack sufficient knowledge
-

19. Other *(briefly explain)*
-

D. Asserting Claims Against the Plaintiff (Counterclaim) or Against Another Defendant (Cross-Claim)

For either a counterclaim against the plaintiff or a cross-claim against another defendant, state briefly the facts showing why the defendant asserting the counterclaim or cross-claim is entitled to the damages or other relief sought. Do not make legal arguments. State how each opposing party was involved and what each did that caused the defendant harm or violated the defendant's rights, including the dates and places of that involvement or conduct. If more than one counterclaim or cross-claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

1. The defendant has the following claim against the plaintiff *(specify the claim and explain it; include a further statement of jurisdiction, if needed)*:
none
-

2. The defendant has the following claim against one or more of the other defendants *(specify the claim and explain it; include a further statement of jurisdiction, if needed)*:
none
-

3. State briefly and precisely what damages or other relief the party asserting a counterclaim or cross-claim asks the court to order. Do not make legal arguments. Include any basis for claiming that the wrongs alleged are continuing at the present time. Include the amounts of any actual damages claimed for the acts alleged and the basis for these amounts. Include any punitive or exemplary damages claimed, the amounts, and the reasons that are alleged to entitle the party to actual or punitive money damages.
- a. The defendant asserting the counterclaim or cross-claim against *(specify who the claim is against)* HSIC alleges that the following injury or damages resulted *(specify)*:
see attached "October 6, 2021 Crash Injuries"

- b. The defendant seeks the following damages or other relief *(specify)*:
see attached: "3 b. Documented Medical Charges"

Note: Sharing of Subrogation Forms by Insurers will undoubtedly change the values

III. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this answer: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the answer otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: 10/03/2023

Signature of Defendant

Printed Name of Defendant

Robert Fogel

Mikal Fogel

B. For Attorneys

Date of signing: _____

Signature of Attorney _____

D 3A

Summary of Injuries

Mikal:

C₁ and C₂ vertebral fractures with cervical fusion of C₁ to C₄ vertebrae.

Open fractures to right ankle with initial external fixation.

L₄ and L₅ lumbar spine fractures.

Sacrum and pelvic fractures.

Four units of blood required.

Robert:

Displaced intertrochanteric fracture of left femur.

Nondisplaced fracture of 7th cervical vertebra.

Displaced fracture of lateral condyle of left tibia.

Injury to left vertebral artery.

Concussion.

Non-union of left femur required total hip replacement.

D 3 b. Documented Medical Charges

	<u>Total Charge</u>
Medicare paid for Mikal:	130,251.39
BCBS Paid for Mikal:	725,929.57
Subtotal:	856,180.96
Medicare paid for Robert:	222,070.02
BCBS Paid for Robert:	421,071.26
Subtotal:	643,141.28
Grand Total of Documented Medical Charges:	<u>1,499,322.24</u>

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Printed Name of Attorney

Bar Number

Name of Law Firm

Street Address

State and Zip Code

Telephone Number

E-mail Address